

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARAH PILLOW and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Oakland, CA

*Docket No. 00-1346; Submitted on the Record;
Issued March 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on January 9, 1999, causally related to her employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical sprain and head contusion after her foot became caught in a piece of strapping and she fell to the floor on October 12, 1994. Appellant stopped work the next day, received continuation of pay and returned to limited- or light-duty work on December 13, 1994.

On January 13, 1999 appellant filed a recurrence of disability claim alleging that her neck and back pain were causally related to her October 12, 1994 employment injury and that she had had two other recurrences of disability. She asserted that for four months prior to her claim she treated her neck and back pain with medication.

By letter dated April 14, 1999, the Office advised appellant of the type of information necessary to establish her recurrence of disability claim and requested additional factual and medical evidence. The Office allowed appellant 30 days in which to respond to its request.

In response, appellant submitted a narrative statement dated April 25, 1999 in which she described her job duties and medical treatment.

In a November 21, 1997 report, Dr. Scott M. Taylor, an attending orthopedic surgeon, provided a history of appellant's October 12, 1994 employment injury and noted her subjective complaints and his objective findings. He diagnosed chronic cervical and lumbar strain.

Appellant also submitted a July 28, 1998 report in which Dr. Sumner S. Seibert, a Board-certified orthopedic surgeon, noted that appellant had complained of intermittent residual neck pain since her October 12, 1994 employment injury. Appellant asserted that her current symptoms increased a month or two prior to the examination without new injuries and her last

“flare-up” occurred in 1997. Dr. Seibert opined that x-rays obtained on the date of examination showed no lateral change compared to x-rays taken in October 1994. He stated:

“I do not have [appellant’s] old records available, at least doctor’s reports, though work slips, etc. are available. I asked her to have these referred to me, but based on the information she has told me, it appears to me that the present symptoms are related to her original problem.”

In his January 18, 1999 report, Dr. Seibert noted that appellant complained of a severe onset of low back pain with radicular symptoms down the right lower extremity. He stated:

“[Appellant] states she has had prior back problems and, in fact, were accompanying her neck complaints, but apparently was not focused on with her visits with me. At this time also she states that all her problems are of an industrial basis which was not what she represented to me previously.”

On examination, Dr. Seibert found marked limping on the right side, decreased range of motion, and a positive straight leg raise test at 35 to 45 degrees. He stated that appellant also complained of pain with her knee and hip bent. Dr. Seibert opined that appellant was disabled from work.

In his February 1, 1999 report, Dr. Seibert noted appellant’s continued neck and low back pain intermittently radiating to the right lower extremity. He found a moderately positive straight leg raise test and mildly decreased range of motion of the lumbar spine and neck.

By decision dated June 7, 1999, the Office denied appellant’s claim on the grounds that the medical evidence of record was insufficient to establish that she sustained a recurrence of disability. The Office found that, although Dr. Seibert concluded that appellant’s neck pain was causally related to her original injury, he failed to provide medical reasoning to support his opinion.

By letter dated June 23, 1999, appellant requested an oral hearing. She submitted a May 27, 1999 report from Dr. Seibert noting appellant’s neck pain and mild headaches and opining that “her symptoms are about the same.” In a June 24, 1999 report, Dr. Seibert noted that his examination revealed marked neck stiffness and pain with hyperextension, low back tenderness and a mildly positive right leg raise test.

At the November 18, 1999 hearing, appellant testified that she experienced pain from “the bottom of [her] head” into her leg following her return to work after her October 12, 1994 employment injury. She discussed her medical treatment and stated that she is able to perform her light-duty job requirements. Appellant asserted that her condition became worse over the years, that she had constant daily pain and that her condition interfered with her ability to perform daily activities including housework.

Appellant submitted a lumbosacral spine magnetic resonance imaging (MRI) scan dated March 16, 1999 from John R. Gustafson, Board-certified in nuclear medicine and radiology. He diagnosed several levels of disc bulging without herniation. Appellant also submitted a cervical

spine MRI scan dated August 26, 1999 from Dr. Roger Pyle. He diagnosed C4-5 and C5-6 disc protrusions with some areas suggesting spinal stenosis.

By decision dated January 10, 2000, the hearing representative affirmed the Office's June 7, 1999 decision on the grounds that the medical evidence of record was insufficient to establish that appellant's current condition was causally related to her October 12, 1994 employment injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on January 13, 1999 causally related to her October 12, 1994 employment injury.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim.² When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³ The claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁴

In this case, appellant has not shown a change in the nature and extent of her modified-duty job requirements, nor has she submitted sufficient medical evidence to show a change in the nature and extent of her injury-related condition. Dr. Taylor diagnosed chronic cervical and lumbar strains, but did not provide a rationalized medical opinion relating these conditions to appellant's October 12, 1994 employment injury. Similarly, in his May and June 1999 reports Dr. Seibert repeatedly noted appellant's neck and back pain but offered no diagnosis or rationalized medical opinion relating her condition to her accepted employment injury.

In his report dated July 28, 1998, Dr. Seibert related appellant's condition to "her original problem," but he did not specifically mention her October 12, 1994 employment injury. Moreover, in his report dated January 18, 1999, Dr. Seibert stated: "At this time also [appellant] states that all her problems are of an industrial basis which was not what she represented to me previously." As he did not explain this inconsistency in his reports, his conclusions have little probative value.

Dr. Gustafson diagnosed several levels of disc bulging without herniation in his March 16, 1999 report, but did not address the causal relationship issue. In his August 26, 1999

¹ 5 U.S.C. §§ 8101-8193.

² *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

³ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

report, Dr. Pyle diagnosed C4-5 and C5-6 disc protrusions with some areas suggesting spinal stenosis, but did not relate appellant's condition to her October 12, 1994 employment injury. As appellant did not submit sufficient evidence showing a recurrence of disability due to a change in her injury-related condition or light-duty job requirements, she failed to satisfy her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated January 10, 2000 and June 7, 1999 are affirmed.

Dated, Washington, DC
March 23, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member